

ROBERT B. HOKE, ET AL.

IBLA 2000-137

Decided December 3, 2003

Appeal from a decision of the California State Office, Bureau of Land Management, declaring the Lewisburg and Little Lynn association placer mining claims (CAMC 267051 and CAMC 267052) null and void ab initio in their entirety.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees:
Generally--Mining Claims: Rental or Claim Maintenance
Fees: Small Miner Exemption

When a claimant fails to file a waiver and no payment has been made prior to the deadline, forfeiture results from the statutory mandate. BLM and this Board were not given the authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences.

2. Mining Claims: Lands Subject To—Mining Claims:
Location—Mining Claims: Placer Claims—Mining Claims:
Relocation—Mining Claims: Withdrawn Land—Wild and
Scenic Rivers Act

It is proper for BLM to declare null and void ab initio a placer mining claim encompassing land which was, at the time of location, withdrawn from mineral entry pursuant to section 9(b) of the Wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1280(b) (1994).

APPEARANCES: Robert B. Hoke and Peggy J. Hoke, Coulterville, California, pro sese.; James L. Rosen, Esq., Office of the General Counsel, United States Department of Agriculture, for the United States Forest Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Robert B. Hoke has appealed a January 10, 2000, decision issued by the California State Office, Bureau of Land Management (BLM), declaring the relocated Lewisburg and the relocated Little Lynn placer mining claims (CAMC 267051 and CAMC 267052) null and void ab initio in their entirety because they had been located on land withdrawn from mineral entry by section 9(b) of the Wild and Scenic Rivers Act (WSRA), as amended, 16 U.S.C. § 1280(b) (2000), at the time of location.^{1/}

On October 23, 1992, Congress designated the North Fork of the Merced River from its headwaters to its confluence with the Merced River as a potential addition to the national wild and scenic rivers system, pursuant to section 5(a) of the WSRA, 16 U.S.C. § 1276(a) (2000). The Federal lands constituting the bed or bank of the river or within 1/4 mile of the bank of the river were withdrawn “from all forms of appropriation under the mining laws.”^{2/} 16 U.S.C. § 1280(b) (2000). However, the withdrawal was subject to valid existing rights. LaMar and Christine Burnett, 153 IBLA 215 (2000); United States v. Brown, 124 IBLA 247, 253, 255 (1992).

On November 20, 1995, Hoke filed notices of location for the Lewisburg and the Little Lynn placer mining claims. On the face of both notices the claimants indicated that the location was a relocation of a previous claim, and in his statement of reasons Hoke states that the claims were relocated because the BLM had not received his small miner’s exemption in a timely manner, and he “found it necessary to relocate these two mining claims on September 1, 1995 at 12:00 noon.” (Statement of Reasons (SOR) at 2.)

The notice of location for the relocated Lewisburg placer claim (CAMC 267051) described the ground located by that claim as the S 1/2 of the SW 1/4 of

^{1/} Hoke has appealed on his behalf and on behalf of his co-locators, Richard A. Hoke and Warren S. Franz.

^{2/} Under 16 U.S.C. § 1278(b) (2000), the withdrawal runs for three complete fiscal year periods following the designation, and continuing thereafter until a report is submitted to Congress, and for such additional time until Congress acts on the matter.

the NW 1/4 of sec. 7, T. 3 S., R 18 E., Mount Diablo Meridian (MDM), California. A map of the claim in the case file depicts this claim as straddling the North Fork of the Merced River and clearly within the 1/4 mile corridor. The location notice for the relocated Little Lynn placer claim (CAMC 267052) described the ground located by that claim as the S 1/2 of the SE 1/4 of the NW 1/4 of sec. 7, T. 3 S., R 18 E., MDM, California. A map of this claim in the case file also depicts the claim as straddling the North Fork of the Merced River and within the 1/4 mile corridor. Hoke does not contend that any part of either claim is outside the 1/4 mile corridor.

As noted above, in its January 10, 2000, decision, BLM declared the Lewisburg and Little Lynn claims null and void ab initio, in their entirety, because the public land in the S 1/2 of the SW 1/4 of the NW 1/4 and the S 1/2 of the SE 1/4 of the NE 1/4, sec. 7, T. 3 S., R. 18 E., MDM, is within one-quarter mile of the North Fork of the Merced River, which had been withdrawn from mineral entry, and remained withdrawn on the date the Lewisburg and Little Lynn claims were relocated.

On appeal, Hoke notes that he had first located the Lewisburg and Little Lynn claims in 1979. After a description of the mining activities on the claims prior to location of the claims in 1979, and a detailed description of his exploration and mining activities since 1979, Hoke states that he had “tried to keep up with the changes in the mining law, rules and its regulations but I sure missed the ‘Potential’ Wild and Scenic Act pertaining to these mining claims on the North Fork of the Merced River.” (SOR at 2.) He then states that “Yes, I found it necessary to relocate these two claims on the date of September 1, 1995 at 12:00 noon.” *Id.* He explains that “my small claims exemption application was lost, and to this day I don’t know what happened to it. I only know that [BLM] had not received it by August 30, 1995, when I last checked with them. It was not certified.” *Id.*

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site was required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. Under 30 U.S.C. § 28i (1994), failure to pay the claim maintenance fee “shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.” The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). At the time the filing that Hoke refers to was

due, the regulations implementing this statute required a claimant to file “proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought.” 43 CFR 3833.1-6(d)(2) (1995).

[1] Hoke located the claims subject to this appeal after concluding that his small miner exemption waiver request for the claims located in 1979 was not filed in a timely manner, based upon an August 30, 1995, statement by a BLM employee that the written waiver request had not been received.^{3/} When a claimant fails to file a waiver and no payment has been made prior to the deadline, forfeiture results from the statutory mandate. Howard J. Hunt, 147 IBLA 381, 384 (1999). BLM and this Board do not have the authority to excuse lack of compliance with the maintenance fee requirement, to extend the time for compliance, or to afford any relief from the statutory consequences. Richard W. Cahoon Family Limited Partnership, 139 IBLA 323, 326 (1997); Paul W. Tobeler, 131 IBLA 245, 249 (1994). In the absence of a timely-filed maintenance fee payment or waiver certification, the claims are forfeited. Harlow Corp., 135 IBLA 382, 385 (1996); Alamo Ranch Co., 135 IBLA 61 (1996).^{4/}

[2] A mineral entry located entirely on public land withdrawn from entry pursuant to the United States mining laws at the time of entry is properly declared null and void ab initio. Ronald W. Froelich, 139 IBLA 84, 85 (1997); James E. Morgan, 104 IBLA 204, 205 (1988); J. Pat Kaufman, 71 IBLA 183, 185 (1983); Marvin Mack, 51 IBLA 30 (1980). On October 23, 1992, the Federal lands constituting the bed or bank of the North Fork of the Merced River or within 1/4 mile of the bank of the Merced River were withdrawn from all forms of appropriation, including appropriation under the mining laws. See Clarence E. Fitzgerald, 55 IBLA 31, 33 (1981); Robert Cornett, 36 IBLA 84, 86 (1978). The Lewisburg and Little Lynn claims (CAMC 267051 and CAMC 267052) were located on September 1, 1995. This was within the three year period specified in 16 U.S.C § 1278(b) (2000). BLM properly declared the claims null and void ab initio in their entirety.

^{3/} The BLM decision, the appeal, and this decision address only the issue of the validity of the claims Hoke located on September 1, 1995. The question of whether BLM actually received the small miner exemption request in a timely manner was not addressed in BLM’s decision, and the validity of the claims located in 1979 is not in issue.

^{4/} If, as Hoke assumes, the claims he located in 1979 were forfeited because his exemption request was not received in a timely manner, no rights can be related back to the 1979 claims by his relocation of the Lewisburg and Little Lynn claims in 1995. See Kenneth Lexa, 138 IBLA 224, 231 (1997).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge